

Chandra Kumar Singh Kasliwal Vs. Addl. Commissioner of Wealth-tax

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Court : Madhya Pradesh

Decided On : Oct-23-1978

Reported in : [1980]122ITR151(MP)

Judge : G.P. Singh, C.J. and ;B.R. Dubey, J.

Acts : [Wealth Tax Act, 1957](#) - Sections 5(1)

Appeal No. : Miscellaneous Civil Case Nos. 250, 251, 252, 253, 254 and 255 of 1976

Appellant : Chandra Kumar Singh Kasliwal

Respondent : Addl. Commissioner of Wealth-tax

Advocate for Def. : A.M. Mathur, Adv.

Advocate for Pet/Ap. : Chitale, Adv.

Judgement :

G.P. Singh, C.J.

1. This order shall also dispose of Miscellaneous Civil Cases Nos. 250, 252, 253, 254 and 255, all of 1976. These are all references under Section 27(1) of the W.T. Act, 1957.

2. The assessee in Miscellaneous Civil Cases Nos. 250, 251 and 255, all of 1976, is Chandra Kumar Singh, while in the other three Miscellaneous Civil Cases, i.e., in Miscellaneous Civil Cases Nos. 252, 253 and 254 of 1976, the assessee is Yash Kumar Singh. Chandra Kumar Singh and Yash Kumar Singh are sons of Raj Kumar Singh. The relevant assessment years are 1958-59, 1959-60 and 1960-61, and the relevant valuation dates for these three assessment years are October 23, 1957, November 12, 1958, and October 31, 1959.

3. Raj Kumar Singh, father of the assesseees, separated from a bigger HUF of which he was a member on 31st March, 1950. In this partition, Raj Kumar Singh acquired assets belonging to his branch. Raj Kumar Singh partitioned his HUF on 21st August, 1957. In this partition, both the assesseees were allotted their shares of joint family assets. The assets included gold ornaments and jewellery. On the death of their mother, Smt. Prem Kumari Devi in April, 1958, both the assesseees succeeded a heirs along with other heirs to the estate of the mother. In April, 1958 Chandra Kumar Singh was 12 years of age and Yash Kumar Singh 10 years of age. Their share in the estate of the mother was one-sixth each. The estate of the mother included gold ornaments and jewellery.

4. In the wealth-tax assessments for the aforesaid years, the assesseees claimed exemption under Section 5(1) (viii) of the Act. The Tribunal granted the assesseees exemption in respect of gold ornaments and jewellery meant for male use. The Tribunal, however, did not allow exemption in respect of gold ornaments and jewellery meant for female use. On applications made by the assesseees, the following question of law has been referred by the Tribunal in all these cases :

' Whether, on the facts and in the circumstances of the case, the Tribunal was justified in refusing exemption in respect of the value of gold ornaments and jewellery meant for female under Section 5(1)(viii) of the Wealth-tax Act '

5. Section 5 of the Act, in so far as is material, reads as follows :

' 5. (1) Subject to the provisions of Sub-section (1A), wealth-tax shall not be payable by an assessee in respect of the following assets, and such assets shall not be included in the net wealth of the assessee--.....

(viii) furniture, household utensils, wearing apparel, provisions and other articles intended for the personal or household use of the assessee. '

6. The aforesaid provision was construed by the Supreme Court in CWT v. Arundhati Balkrishna : [1970]77ITR505(SC) . In that case, it was held that Section 5(1)(viii) covered the case of jewellery intended for the personal use of the assessee. Their Lordships observed that it is well known that jewellery is widely used as articles of personal use by the ladies in this country, specially by those belonging to the richer classes. This case was followed by the Supreme Court in Pandit Lakshmi Kant Jha v. CWT : [1973]90ITR97(SC) .

7. The expression ' intended for the personal or household use of the assessee' as it occurs in Section 5(1)(viii) came up for consideration before the Bombay High Court in G. S. Poddar v. CWT : [1965]57ITR207(Bom) . It was held that this expression meant articles which are normally, commonly or ordinarily intended for personal or household use according to the ordinary ideas, habits, customs and notions of the class of society to which the assessee belongs or according to the well-established habits, customs and traditions of the family of the assessee. It was further held that the mere possibility that the articles are capable of being put to a personal or household use would not be sufficient to treat them as intended for personal or household use. It was also held that the question whether the articles are intended for personal or household use has got to be considered with reference to the facts and circumstances as they exist at the time when the question has to be determined. In Poddar's case : [1965]57ITR207(Bom) , the articles consisted of gold caskets, gold trays, gold glasses, cups, saucers and spoons which were presented to the assessee on his being appointed Justice of the Peace. Ever since that time the assessee kept these articles in a glass show-case for display in a drawingroom. The assessee contended that these articles were household articles and that he was entitled to exemption under Section 5(1)(viii). This contention was negatived. The assessee backed his contention by arguing that the expression ' intended for the personal or household use ' should be interpreted to mean capable of being intended for personal or household use so that if the articles are such as can be put to a personal or household use, if so intended by their owners, they would be entitled to exemption. This argument was negatived, and, as earlier pointed out, it was held that the question whether the articles are intended for personal or household use has got to be considered with reference to the facts and circumstances as they exist at the time when the question has to be determined. It was pointed out that what the position will be in future assessment if the assessee starts using these articles for his personal use hereafter, is irrelevant for determining the claim of exemption. Poddar's case : [1965]57ITR207(Bom) , was approved by the Supreme Court in H. H. Maharaja Rana Hemant Singhji v. CIT : [1976]103ITR61(SC) . The Supreme Court observed that in Poddar's case it was held that the expression ' intended for personal or household use ' did not mean capable of being intended for personal or household use, and it meant normally, commonly or ordinarily intended for personal or household use. The Supreme Court further observed that this, in its opinion, was the true concept of the expression 'personal use'. The Supreme Court in H. H. Maharaja Rana Hemant Singhji's case : [1976]103ITR61(SC) , was concerned with the expression ' personal use ' as it occurs in Section 2(4A) of the Indian I.T. Act, 1922. However, the decision in that case, in so far as it affirms the Bombay 'decision in Poddar's case : [1965]57ITR207(Bom) , construes the meaning of the expression ' intended for the personal or household use ' in Section 5(1)(viii) of the W.T. Act.

8. It is in the light of these decisions that the question referred to us has to be answered. The gold ornaments and jewellery, with which we are concerned, were meant for female use. During the relevant years, both the

assesseees were minors. They were not married. They were separated from the other members of the family. As the ornaments and jewellery were meant for female use, they could not be in the personal use of the assesseees. Indeed, that was also not contended by the learned counsel for the assesseees before us. The learned counsel for the assesseees submitted before us that as the assesseees were minors, they lived with their father and the other members of the family and that the ornaments and jewellery could be in use and were in the use of the female members of the family, such as, their sisters and sisters-in-law. It has to be noted that the assesseees are being assessed as individual and not as HUF. The case that female members of the household of their father, with whom the assesseees lived during the relevant period, were using the ornaments and jewellery or could have used them, was never raised before the Tribunal. The contention raised by the learned counsel for the assessee before the Tribunal is referred to in para. 7 of the Tribunal's order. Briefly stated, the submission of the assesseees before the Tribunal was that the word 'intended' means 'suitable' or 'apt' and the proper test for application of Section 5(1)(viii) will be the use to which an article could be put and not its actual user. It was also submitted that as, in the case of the assesseees, a future household use was a clear possibility, they were entitled to get the benefit of the exemption under s. 5(1)(viii). The assesseees' contention before the Tribunal clearly goes counter to the view expressed in Poddar's case : [1965]57ITR207(Bom) which has been approved by the Supreme Court in H. H. Maharaja Rana Hemant Singhji's case : [1976]103ITR61(SC) and it is for this reason that the contention has not been repeated before us. The argument which the learned counsel for the assesseees has advanced before us, viz., that the ornaments and jewellery in question were intended for the use of the assesseees' sisters and sisters-in-law who may have been living with the assesseees' parents, was never advanced before the Tribunal. There are no facts stated by the Tribunal to suggest that the articles in question were intended for any such use. It cannot be assumed that the ornaments and jewellery, with which we are concerned, were used or intended for being used, during the relevant period, by the assesseees' sisters and sisters-in-law. The argument of the learned counsel for the assesseees that although the assesseees were separate their household included their sisters, the wives of their brothers who were separate, and their father who was also separate, need not be considered, because even if we were to assume that in spite of the partition, as the assesseees were living with their father, their father's household was the household of the assesseees, the finding cannot help the assesseees as there are no facts found by the Tribunal to show that the gold ornaments and jewellery were intended for the use of any such female member of this bigger household. We may make it clear that the Tribunal cannot be blamed for not giving any finding on this question, the reason being that no such case was ever advanced before the Tribunal.

9. The learned counsel for the assesseees referred us to a decision of the Bombay Tribunal in *Wealth-tax Officer, Companies Circle (I)(2), Bombay v. Shri XXZ* (1970 Taxes & Planning, Part VIII, p. 13). In that case, the gold ornaments belonging to the assessee were exempted under Section 5(1)(viii), as, on the findings reached by the Tribunal, they were intended for the use of the assessee's wife and daughter who were members of the assessee's household. The decision of the Bombay Tribunal in that case has no application here. As already stated, during the relevant period, the assesseees were minors. They were separate from their parents. They never contended before the Tribunal that the ornaments and jewellery, with which we are concerned, were intended for the use of any female member of the household of their father with whom they lived.

10. The learned counsel for the assesseees also referred us to the meaning of the word 'household' from *Corpus Juris Secundum*, Vol. 41, p. 367. As stated therein, the word 'household' has been variously defined, depending to some extent on the connection in which it is used ; and may mean 'a domestic establishment, a family, a number of persons dwelling under the same roof and composing a family ; and, by extension, all who are under one domestic head ; a group of persons living together ; the members of a house collectively, an organised family and whatever pertains to it as a whole ; persons who dwell together as a family ; also the place where one holds house, his home'. It is further stated at the same place that 'the term has been held synonymous with 'family' and also has been distinguished therefrom'. As earlier pointed out by us, even if we assume that the word 'household' should be given a wide meaning and that it should include not only the assesseees alone but their father and the female members of the family of their father with whom they were

living, the case of the assessee does not advance any further, the reason being that it was never contended before the Tribunal that the gold ornaments and jewellery were ever intended for the use of any female member of such a household.

11. For the reasons given above, the question referred to us in all the cases is answered in the affirmative in favour of the revenue and against the assessee. There shall be no order as to costs.

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